Supreme Court, U.S.
FILED

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In the

Supreme Court of the United States

October Term, 1997

STANLEY TROUT,

Petitioner,

against

STATE OF OHIO,
CITY OF BLUE ASH,

Respondent.

Petition for Writ of Appeal
Petition for Writ of Certiorari

Stanley Trout
1934 C. Chaucer
Cincinnati, Ohio

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Question Presented

This petition presents an important issue of federal law where an apparent conflict exists in this court's decision.

The principle that shows evidence was not presented to show the officer was not operating the radar properly. *United States of America vs. Raymond Fields*, Case No. 3-81-0064. This case was reversed in the United States District Court for the Southern District of Ohio.

The principle that the State did introduce an ordinance for the City of Blue Ash to establish that at the time Appellant was in his vehicle and engaged in an unlawful act. The Appellant objected the objection was overruled, and Appellant was found guilty. *Steele v. State of Ohio*, No. 21660, Supreme Court of Ohio, 121 Ohio St. 332, 168 N.E. 846.

In the decision handed down it was found that a municipal penal ordinance is inadmissible to establish unlawful act committed.

Conclusion

Stanley Trout has shown by testimony, facts, evidence and merits which establish the following:

1. The vehicle was maintained in a reasonable manner.
2. The officer was not properly trained in radar function.
3. The officer cited on a county highway, not in the City of Blue Ash.
4. The officer did not properly fill out the traffic citation.
5. The citation itself was issued on an ordinance of the City of Blue Ash.

In light of the evidence brought forward in the petition for appeal, the testimony of the officer and in the light that the Respondent used a municipal ordinance against the Petitioner.

In the case citings listed in this petition to appeal there is one conclusion a reasonable person could reach by the Preponderance of this case and facts.

WHEREFORE, this court should reverse the conviction of Stanley Trout,

Respectfully submitted,

Stanley Trout

Stanley Trout
c/o 1934 C Chaucer Drive
Cincinnati, Ohio

mailed on 10-27-97

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In the
Supreme Court of the United States

October Term, 1997

STANLEY TROUT,

Petitioner,

against

STATE OF OHIO,
CITY OF BLUE ASH,

Respondent.

Petition for Writ of Appeal
Petition for Writ of Certiorari

Petitioner, Stanley Trout, respectfully petitions this court to issue an appeal to review to appellate brief as the Ohio Supreme Court declined jurisdiction. See the decision of the Ohio Supreme Court.

Opinions Below

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to hear the case.

Jurisdiction

The Supreme Court issued its decision on May 14, 1997. This Court has jurisdiction since the Supreme Court declined to hear the appeal from the Appellate Court.

Statement of the Case

This case presents issues of disputed facts: and is brought forth on the same premise that Nedelkoff, Steele and others. Stanley Trout showed and rebutted the evidence brought forth by the prosecution. This case should have been dismissed. The Ohio Supreme Court would not even look at the actual facts of the case involved. There is also the intent of the legislative body with Ohio Revised Code at 4511.21.

The Supreme Court of Ohio

FILED

MAY 14 1997

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

1997 TERM

tate of Ohio, City of
lue Ash,
Appellee,

Case No. 97-448

v.

E N T R Y

tanley D. Trout,
Appellant.

Upon consideration of the jurisdictional memoranda filed
n this case, the Court declines jurisdiction to hear the case.

OSTS:

Docket Fee, $40.00, paid by Stanley Trout.

(Hamilton County Court of Appeals; No. C960428)

THOMAS J. MOYER
Chief Justice

018r051497

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO, CITY OF BLUE ASH, Plaintiff-Appellee, vs. STANLEY D. TROUT, Defendant-Appellant.	:	APPEAL NO. C-960428 TRIAL NO. M96TRD010408 JUDGMENT ENTRY.

This appeal, having been heretofore placed on the accelerated calendar, is being considered pursuant to App.R. 11.1(E) and Local Rule 12 and shall not be considered controlling authority except as provided in Rule 2(G)(1) of the Supreme Court Rules for the Reporting of Opinions.

Defendant-appellant Stanley Trout appeals from the judgment of the trial court finding him guilty of violating Blue Ash City Ordinance 333.03, operating his car at an unreasonable rate of speed.

In his first assignment of error, Trout argues that his conviction for driving at an unreasonable rate of speed is not supported by sufficient evidence and is against the manifest weight of the evidence.

Blue Ash City Ordinance 333.03(b) provides that the operation of a car on the Ronald Reagan Expressway in excess of fifty miles an hour is a *prima facie* violation of Blue Ash City Ordi-

nance 333.03(a). The city offered into evidence proof that Officer Hoffman, using a stationary K-55 radar gun, clocked Trout driving sixty-five miles an hour on a stretch of the Ronald Reagan Expressway within the city of Blue Ash.[1]

The scientific reliability of a stationary radar speed-detection device using the Doppler principle has long been recognized in Ohio. *East Cleveland v. Ferell* (1958), 168 Ohio St. 298, 154 N.E.2d 630, syllabus. The city presented sufficient evidence demonstrating that the device used was correctly tested for accuracy and that Officer Hoffman was qualified to operate it. In this case, the reading from the K-55 radar gun was properly admitted into evidence and relied on by the trial court. *Ferell, supra; Cincinnati v. Wirtz* (Apr. 14, 1982), Hamilton App. No. C-810369, unreported.

Additionally, Officer Hoffman testified that he eye-balled Trout's speed at sixty-five to sixty-seven miles per hour and that the rate of speed was unreasonable for the circumstances.

A reviewing court will not reverse a conviction based upon sufficient, credible evidence. Therefore, the first assignment of error is overruled. *See State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus; *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717.

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[1]The posted speed limit on this expressway is fifty miles per hour.

In his second assignment of error, Trout argues that the city failed to demonstrate that Officer Hoffman was qualified to use the K-55 radar gun. Trout argues also that the trial court erred in limiting his cross-examination of Officer Hoffman.

We have stated, *supra*, that the city did present sufficient evidence demonstrating Officer Hoffman's ability to operate the radar gun. Furthermore, we hold that the trial court did not abuse its discretion in limiting Trout's cross-examination to relevant and non-duplicative questions. Evid.R. 402 and 403(B). The second assignment of error is overruled.

In his third assignment of error, Trout argues that the trial court erred in allowing into evidence the Blue Ash City Ordinance under which he was charged. The authority Trout cites for this proposition of law does not support his argument. The ordinance must come into evidence in order for the city to demonstrate that all the elements of the offense have been proven beyond a reasonable doubt.

Additionally, Trout argues that the traffic citation was improperly completed because it did not specify the subsection of Blue Ash City Ordinance 333.03 that he was charged with violating. We hold that the citation informed Trout of the offense charged and essential facts constituting the offense. This is all that is required. Crim.R. 3; *State v. Broughton* (1988), 51 Ohio App.3d 10, 553 N.E.2d 1380.

Finally, we note that the City of Blue Ash has jurisdiction to enforce its traffic laws on a county expressway within its

city limits. Section 3, Article XVIII, Ohio Constitution.

The third assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Costs to be taxed in compliance with App.R. 24.

Further, it is Ordered that a certified copy of this Judgment Entry shall constitute the mandate and said mandate shall be sent to the trial court pursuant to App.R. 27.

M.B. BETTMAN, P.J., GORMAN and SUNDERMANN, JJ.

To the Clerk:

Enter upon the Journal of the Court on 1/17/97

per Order of the Court _____.
Presiding Judge

STATE OF OHIO, COUNTY OF HAMILTON,
COURT OF ~~COMMON PLEAS~~ Appeals
THIS IS TO CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY OF THE
DOCUMENT ON FILE IN THIS OFFICE ENTERED
1-17-97
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 1-17-97
JAMES CISSELL, CLERK OF COURTS
BY _____
DEPUTY CLERK

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

5 thru 7

24 Ohio Misc. 153

The STATE of Ohio

v.

NEDELKOFF.

No. 9309

Columbiana County Court of Ohio,
Southwest Area.

April 15, 1970.

Prosecution for operating motor vehicle at an unreasonable and improper speed. The County Court, Columbiana County, MacDonald, J., held that where highway on which defendant physician was driving while en route to hospital to attend patients was dry and straight and traffic was light, defendant's speed of 60 miles per hour in posted 45-mile-per-hour zone was reasonable and proper.

Charge dismissed.

1. Automobiles 331

Even though a defendant is shown to have been operating motor vehicle at speed determined by director of highways to be prima facie unlawful, if speed was reasonable and proper under

circumstances, the defendant must be found not guilty. R.C. § 4511.21.

2. Automobiles 331

Where highway on which defendant physician was driving while en route to hospital to attend patients was dry and straight and traffic was light, defendant's speed of 60 miles per hour in posted 45-mile-per-hour zone was reasonable and proper, R.C. § 4511.21

Syllabus by the Court

Although the defendant is shown to have been operating a motor vehicle at a speed determined by proper procedures of the Director of Highways to be prima facie unlawful on that portion of the highway involved, where the trier of the facts determines that, at the time and place under the circumstances and all conditions existing, his speed was reasonable and proper, the defendant must be found not guilty of violating R.C. § 4511.21.

- - - - - -

The defendant, Jeko M. Nedelkoff, was charged with a violation of R.C. 4511.21 on an affidavit in the form of a uniform traffic ticket signed by Patrolman D. Baker of the Ohio State Highway Patrol. The affidavit was sworn to and filed in this court on March 16, 1970, in which

affidavit it was charged that on March 15, 1970, at 10:45 p.m. the defendant operated a motor vehicle on State Route 45 north of the village limits of Lisbon, Ohio, at an unreasonable and improper speed, to wit, a speed of 60 miles per hour in a posted 45-mile-per-hour zone.

The defendant was arraigned in this court on March 17, 1970, and entered into a plea of not guilty. On the issue joined, the case came on for trial before this court on April 15, 1970.

R.C. 4511.21 is entitled *Speed Limits; Modifications* and is the section of the motor vehicle traffic laws which is designed to regulate the speed of motor vehicles upon the streets and highways of the state of Ohio. The section provides:

"No person shall operate a motor vehicle, trackless trolley, or streetcar in and upon the streets and highways at a speed greater, or less than is reasonable or proper, having due regard to traffic surface, and width of the street or highway or any other conditions * * *"

The section, then, provides that it is prima facie lawful for the operator of a motor vehicle to operate the same at a speed not exceeding certain limits under certain situations and locations. For example, 60 miles per hour during the day time and

50 miles per hour during the night time on highways outside municipal corporations.

State Route 45, which runs in a northerly direction from the municipal limits of the Village of Lisbon is a duly established State Highway, and the provisions of the statute providing that it is prima facie lawful to operate a motor vehicle at a speed not exceeding the limits designated would apply to State Route 45; with certain exceptions.

R.C. 4511.21 provides further that it is prima facie unlawful for any person to exceed any of the speed limitations established by the statute.

In addition to the prima facie limits set forth in the statute, the statute provides further that whenever the Director of Highways determines upon the basis of an engineering and traffic investigation that any prima facie speed set forth in divisions (A) to (1), inclusive, of the section is greater, or less, than is reasonable or safe under the conditions found to exist at any place upon any part of a state route, the director is authorized to determine and declare a reasonable and safe prima facie speed limit, which shall be effective, when appropriate signs giving notice are erected on such part of the state route.

The record indicates that the Director of Highways of the state of Ohio, having followed the

procedures set forth in the authorizing statutes, has reduced the prima facie speed limit on State Route 45 for a distance of three miles north of the village limits of the Village of Lisbon, Ohio, and has by appropriate action established such prima facie limit to be 45 miles per hour, and this stretch of highway bears appropriate signs giving notice of such prima facie limit, such signs being placed approximately a quarter of a mile apart on each side of the highway.

[1] The evidence in this case establishes the fact that, at the time and place charged in the affidavit, the defendant was exceeding the prima facie limit so established. The officer's testimony was that the defendant was followed for a distance of some mile and a half to two miles, and that, during the time he was observed, his speed was 60 miles per hour. It is not seriously controverted by the defendant that he was operating at the time and place at a speed in excess of the prima facie limit.

The words "prima facie" are Latin in origin, although they have now been included in Webster's Standard Dictionary and have been defined as meaning "at first sight; on first view before further examination; and in law, adequate to establish a fact, or raise a presumption of fact unless refuted."

"Upon consulting the work entitled Words and Phrases, it is stated:

"Prima facie evidence is merely proof of the case upon which the jury (or court) may find a verdict unless rebutted by other evidence. In other words, prima facie evidence is not conclusive, but such as may be overcome by evidence to the contrary; and such evidence is to be weighed together with the other evidence, and in connection with the reasonable doubt and presumption of innocence which obtain in all criminal trials." *Stoneham v. State*, 99 Tex.Cr.R. 54, 268 S.W. 156; 33 Words and Phrases 553.

In the case of *State of Ohio v. Schultz*, 11 Ohio Misc. 81, 205 N.E.2d 126, 30 O.O.2d 420, the court held as follows:

"* * * in the State of Ohio, under the provisions of 4511.21 of the Revised Code of Ohio, *there is no fixed speed limit*." (Emphasis added.)

In the case of *Tenhunfeld v. Parkway Taxi Cab. Co.*, 105 Ohio App. 425, 152 N.E.2d 770, 6 O.O.2d 182, the court stated:

"The statute (R.C.4511.21) continues by making it prima facie unlawful for a person to operate a motor vehicle at a speed greater than (those speeds set forth in the statute). It is conceded that Plaintiff was driving at a prima facie unlawful speed, but whether he violated the statute * * * was a question of fact for the jury, in the light of all

attendant circumstances. A prima facie unlawful speed may be rebutted by evidence, which a jury might find would bring such speed within lawful limits."

In the case of *Cleveland v. Keah* (1952) 157 Ohio St. 331, 105 N.E.2d 402, 47 0.0. 195, decided by the Supreme Court of Ohio, Syllabus 1 is, in part, as follows:

"* * * such a provision as to speed is merely a rule of evidence raising a rebuttable presumption which may be overcome by evidence that in the circumstances the speed was neither excessive nor unreasonable."

See *also City of North Ridgeville v. Munkacsy*, 4 Ohio App.2d 389, 212 N.E.2d 826, 33 O.O.2d 488 ((Lorain County), *and Lehman v. Westhoven*, 110 Ohio App.2d 66 (Allen County).

The evidence in the case under consideration was that the defendant Nedelkoff is a doctor of medicine, and, at the time and place of the alleged offense, he was on his way to the Salem City Hospital to attend two patients. Dr. Nedelkoff testified that the patients he was attending were serious cases, and that he was attempting to get to Salem as soon as possible. Whether or not an emergency actually existed is certainly not for this court to say. The defendant, Dr. Nedelkoff, being a

physician and doctor of medicine, would certainly be in a better position than this court, or the arresting officer, to say.

The evidence further was and is not controverted that highway was perfectly dry. There was no snow, or wet condition to cause a hazard; that the highway is a modern highway with a hard, paved surface 24 feet wide. The court takes judicial notice of the fact that said highway is a perfectly straight stretch. Although it is what might be termed rolling, there are no exceptionally steep grades, and there is nothing to indicate any other particularly hazardous situation in regard to this stretch of highway. The arresting officer testifies that there was no evidence, and that he did not observe any reckless operation whatever; and, with the exception of the fact that the defendant was exceeding the prima facie limit, he was not in violation of any other traffic law. The evidence was that the amount of traffic on the highway at this particular time and place was very light.

Route 45 north of the corporate limits of the Village of Lisbon for a distance of some 2 1/2 to 3 miles is considerably built up with business establishments and rural residences. There are some intersecting township roads and numerous driveways leading into private residences and business establishments. It is assumed that, because of this condition, the Director of Highways deemed

it advisable to reduce the prima facie limit to 45 miles per hour. However, the court must take into consideration in this case the fact that the offense charged was at the hour of 10:45 p.m. at the hour, there are few, if any, business establishments open, and at that particular hour, there would be relatively few vehicles proceeding into private driveways, or out of private driveways.

[2] Taking all these matters into consideration, and considering all the facts of the case as established by the evidence, this court finds that the defendant Nedelkoff has successfully rebutted the presumption referred to, and the court, therefore, finds that, at the time and place and under the circumstances and all conditions existing, that the defendant's speed was reasonable and proper.

The court, therefore, finds the defendant not guilty. The charge is, therefore, dismissed.

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UNITED STATES OF AMERICA

v.

FIELDS
Case No. 1-81-0064M

United States District Court
Southern District of Ohio
Western Division
February 4, 1982

This case is before the court after a non-jury trial on the merits. Defendant was arrested by Sgt. Robert E. Triplett of the Wright-Patterson Air Force Base (WPAFB) Security Police, on June 30, 1981, on lands within exclusive federal jurisdiction.

Defendant was charged with exceeding the speed limit by driving 43 miles per hour in a 30-mile-per-hour zone. The speed was confirmed by a Speedgun Eight radar device utilized by Sgt. Triplett.

Defendant claimed that he was not driving at an excessive rate of speed and that evidence obtained by radar should not be accepted by the court for the following reasons: (1) radar is not generally reliable as a device for measuring the speed of a moving vehicle; (2) the Speedgun Eight is not capable of being operated with a sufficient

degree of accuracy so as to result in reliable readings; (3) the officer operating the device was not properly trained; and (4) the officer did not operate the device in a proper manner. Only three witnesses testified in this case: David Krile, a radar expert, Sgt. Triplett, and Raymond Fields.

The expert witness, David Krile, was a well-qualified and very credible expert witness. Dr. Krile held both a master's degree and a doctorate in the field of electrical engineering. He was employed by the area of communication and, specifically, radar engineering. Since 1965 he had worked as a radar engineer and had developed radar systems for airborne applications. Although he was most familiar with air-to-ground navigation radar, Dr. Krile was scientifically familiar with the device in question in this case and had experimented with it at length. He was called by the prosecution as an expert on radar devices.

Dr. Krile testified that the Speedgun Eight is a hand-held radar device which could be used in either a stationary or moving mode. It operates on the scientific principle known as the Doppler Effect: that is, the Speedgun Eight emits a signal of a known frequency which is reflected from the vehicle being measured, with the difference in frequency (caused by the movement of the measured vehicle) being calibrated into a velocity reading. Dr. Krile testified that the Doppler Effect

is a valid and accurate scientific principle which is accepted by that portion of the scientific community involved with the subject of radar. The Doppler Effect principle is used in industry, in law enforcement and in the field of physics. He believed that when operated correctly, the Speedgun Eight would give a correct measurement of the speed of a vehicle. Dr. Krile testified that in order for the device to be operated correctly, the following conditions must exist: First, there must be one target within the radar beam. If there is more than one target, the radar may give an incorrect reading. The radar beam travels approximately one-half mile in distance and 1500 feet in width. Dr. Krile testified that if more than one vehicle is within the radar beam, it is impossible to determine which vehicle's speed the radar device is measuring, regardless of the direction of the vehicle. Thus, when two automobiles are within one-half mile of the operating radar device, it is not possible to determine whether the device is measuring the speed of the closer or the farther vehicle, or whether the device is measuring the speed of the larger or smaller vehicle. Because the radar beam spreads not only in width, but also in height, it may measure the velocity of aircraft which are taking off or landing within the beam range, even though it is pointed at an automobile on the highway.

Second, the radar device must be operated in an area where there are no radiating sources of

electromagnetic interference. Radiating sources, such as the heater fan of an automobile, may cause the radar device to give a spurious reading. Anti-radar devices and radar-jamming devices which are utilized at WPAFB may also tend to mask signals which measurement if they generated energy at the same frequency as the Speedgun Eight.

Dr. Krile was able to obtain a reading of 88 miles per hour on the Speedgun Eight by whistling into the microphone of Citizens Band CB radio. He stated that such electromagnetic interference could cause a spurious reading of any speed between 0 and 99.

Third, the radar device must be operated in an area free of reflecting objects. Street signs, buildings and other objects will cause the radar beam to reflect at an angle and read movement to either side of the operator without the operator being able to determine that such a spurious reading is being given. For example, Dr. Krile operated the Speedgun Eight on an empty street and it measured the speed of an automobile traveling on an adjacent highway, because the beam had been reflected by a street sign. Dr. Krile stated that, if an automobile traveled directly in the path of the radar device, there would be no way for the operator to tell whether the device was measuring the speed of the target automobile or the speed of another automobile within the range of the reflected beam.

Under those circumstances, the operator would be led to believe that the reading was being obtained from the target automobile. The Speedgun Eight may even measure the speed of an automobile traveling behind the operator if it is reflected in that direction by an object. Dr. Krile stated that it is impossible to predict what the effect of reflection is on the radar device in question. Reflection can be obtained from non-metallic as well as metallic objects. Based upon scientific experiments personally conducted by Dr. Krile, even raindrops caused reflection of the radar beam.

The Speedgun Eight operates on X Band at a frequency of 12,000 megahertz. It is a continuous wave device; that is, when being operated it is continuously emitting and receiving a signal. Because it takes at least two seconds for the device to "lock up" on a target, the operator must take into account all of the above considerations within a period of two seconds in order to operate the device properly.

These considerations are: (1) whether more than one target is within the range of the device, (2) whether the area is free of radiating sources, and (3) whether any objects will reflect the beam to vehicles in other areas.

Dr. Krile testified that the amount of training recommended by the manufacturer of the Speedgun

Eight is not sufficient. He believed that one to two weeks training by a properly trained engineer or physicist would be necessary before an officer could understand the operation of the radar device. He testified that training by another police officer would not be sufficient.

Dr. Krile stated that, although the Speedgun Eight has both an internal and external calibration device, it is possible to get a correct calibration reading yet still have a malfunction within the device. The external calibration device, a tuning fork, must itself be calibrated periodically to avoid inaccurate calibration. Damage to the tuning fork, such as nicks and scratches, can cause an inaccurate reading. He testified that it would be preferable to take the radar device into a laboratory to have it calibrated periodically.

The Speedgun Eight does not have an audio monitor which will indicate by increasingly louder noises the approach of a particular vehicle. It does have an audio signal which emits a tone when something within the range of the radar device exceeds a speed set by the operator. Dr. Krile testified that this audio signal may mislead the operator by causing him to look up at the time he hears the signal and assume that the vehicle within his view is the one causing the audio signal, whereas any vehicle within one-half mile range of the radar may be the cause of the signal.

The police officer, Sgt. Triplett, has been a member of the WPAFB Security Police for two years. He claims to have expertise in estimating the speed of vehicles. However, his speed estimations were all verified by radar, thereby depending upon the reliability of the radar device for their accuracy. Sgt. Triplett has used the Speedgun Eight radar device at least 300 times. His training consisted of two weeks of practical training with other officers in the traffic division and three days at the Ohio State Police Academy in Columbus, Ohio. No details were given as to what specific courses he attended or what information he received. His only training in the possibility of errors by radar was that he learned he could obtain a "ghost reading" from some other moving object. He stated that it was impossible to get a ghost reading on the Speedgun Eight without being aware of it. Sgt. Triplett was not aware that the Speedgun Eight might give a spurious reading due to a reflection. Nor was he aware that the Speedgun Eight could not discriminate between two vehicles on the highway. He testified that, when two vehicles are moving in opposite directions, the Speedgun Eight is able to discern which vehicle is moving in which direction. He testified that the range of the Speedgun Eight is 700 to 800 feet and that he does not know the width of the beam.

On June 30, 1981, Sgt. Triplett had parked his police vehicle next to a building about three feet high, the contents of which he was unaware. The evidence shows that the building contained a sewage pumping station with rotating metal ventilation fans on its roof. Sgt. Triplett was within five feet of the building at the time he was operating the Speedgun Eight and was pointing the radar device directly over the top of the building on Skeel Avenue. He testified that there are speed limit signs on Skeel Avenue within the range of the radar device and that there are a number of runways in the area of Skeel Avenue. He calibrated his radar device eight times that day. The device had been certified for calibration in April of 1979, but had never received any maintenance since that time. After checking calibration, he checked for "ghost" by moving the radar 360 degrees. At 3:20 p.m. he observed defendant's automobile about 800 feet away and concluded Defendant was speeding. He aimed the Speedgun Eight at the automobile, held it in place for two to three seconds, and "locked in" a reading of 43 miles per hour. He estimated in his own mind that the car was traveling about 40 miles per hour. Although he testified that traffic was light and that the Defendant was driving in a westerly direction, the violation notice that Sgt. Triplett filled out reflects that traffic was medium and his written report reflects that Defendant was traveling northeast on Skeel Avenue. Although he testified the Defendant was traveling at 43 miles per hour, he

also testified that he had to travel at a speed of only 25 to 30 miles per hour with his lights flashing in order to catch defendant.

The Defendant, Raymond Fields, is an aircraft mechanic foreman in the Aeronautical Systems Division at WPAFB and has been employed there for 36 years. He testified that he was on his way to work on a route he had taken every day for the past 21 years when he observed Sgt. Triplett's police vehicle about 1000 feet away. He looked at his speedometer and it showed that he was traveling at a speed of just over 30 miles per hour. At the time he was stopped by the officer, he noticed an airplane departing the runway near Skeel Avenue. The airplane had just landed in a "touch and go" maneuver. Mr. Fields testified that he was familiar with the arrival and departure of airplanes in that area and that approximately 400 arrivals and departures are made within a day's time, the majority being between the hours of 7:00 a.m. and 9:00 p.m. He stated that he may have been traveling two or three miles per hour over the limit, but he denied driving 43 miles per hour as recorded on the radar device.

In order for evidence obtained from a scientific device to be admissible, the device must have gained general acceptance among the scientific community in the particular field in which the technique is used.

In the case of *United States v. Stifel*, 433 F.2d 431 (6th Cir. 1970), the court stated: "Neither newness nor lack of absolute certainty that the results are conclusive suffices to render it inadmissible."

In the case of *United States v. Franks*, 511, F.2d 25 (6th Cir. 1975), the court stated: "Although some courts have taken the view that those most qualified to assess the general validity of a scientific method should have determinative voice regarding admissibility * * *, the United States Court of Appeals for the Sixth Circuit believed that general acceptance in the scientific community is nearly synonymous with reliability."

In the case of *United States v. Franks*, 511 F.2d at 33, Footnote 12 (6th Cir. 1975), the court stated: "Therefore, if a scientific process is reliable, courts may also deem it to be generally accepted by the scientific community."

In the case of *People v. Kelly*, 17 Cal.3d 24, 549 P.2d 1240, 130 Cal. Reptr. 144 (1976), the court stated: "Once it is determined that a scientific device is reliable, then the Court must also determine that the person operating the device was properly qualified. Such person must have sufficient skill, experience or knowledge in that particular field as to make it appear that his opinion

would rest on substantial foundation and would tend to aid the trier of fact in his search for truth."

In the case of *Bridger v. Union R.R. Company*, 355 F.2d 382 (6th Cir. 1981), the court stated: "It must also be shown that the scientific device itself was in proper working condition and was operated in a proper manner by the witness."

In the case of *City of East Cleveland v. Ferrell*, 168 Ohio St. 298, 154 N.E.2d 630 (1958), the court stated: "The term 'radar' is an acronym of the phrase 'Radio Detection and Ranging' and is correctly applied only to a device such as that used by the armed forces for determining the range, direction and speed of a target object. The instrument commonly used by police, such as the Speedgun Eight, operates on the principle known as the Doppler Effect (see P.2 Supra). Direction and range cannot be measured by this device."

IN the case of *State v. Tomanelli*, 153 Conn. 365, 616 A.2d 625 (1966), the court stated: "There is no question that the principle of the Doppler Effect is generally accepted by the scientific community involved in the field of radar. *City of East Cleveland v. Farrell*, Supra. Most courts will take judicial notice of the Doppler Effect in radar without the necessity of expert testimony as to the scientific principles underlying it. Id. at 303, 154 N.E.2d at 633 (1958).

In the case of *State v. Tomanelli*, 153 Conn. 365, 216 A.2d 625 (1966), the court stated: "Nevertheless, there remains the question as to whether the particular scientific device utilized in this case is reliable for its intended purpose."

No testimony was offered by the prosecution to establish that the Speedgun Eight had gained general acceptance in the scientific community concerned with the field of radar. An Ohio court has determined that a device such as the Speedgun Eight, which does not have an audio signal indicating whether the target vehicle is the violator, is not reliable scientific technique. *City of Akron v. Gray*, 14 Ohio OP.3rd 60, Ohio Misc. 68 (1979).

Although Dr. Krile testified that the Speedgun Eight was reliable when operated correctly, we find that it is virtually impossible for a trained operator to fulfill the conditions of correct operation. It is not possible for the operator to accurately determine whether any other automobile is within one-half mile radius of the radar in addition to the target automobile, whether there is any electromagnetic interference from radiating sources within the area, and whether the area is free of objects which would cause reflection of the radar beam, all within the time period of the operation of the device. When a trained operator aims the device at a target vehicle and obtains a reading, it is not possible for the operator to determine whether the device is reading

the target vehicle or some other vehicle within a one-half mile radius, or a vehicle outside the area as a result of a reflection in the beam from an object which might be as small as a raindrop, or whether the device is measuring electromagnetic interference from a radiating source, such as an electric fan. Thus, the chances for error in the operation of the Speedgun Eight are so great as to make the device unreliable for the purpose for which it is intended.

Sgt. Triplett was not qualified to operate the Speedgun Eight. He did not receive the training which the prosecution's expert stated was necessary to correctly operate such a device. Sgt. Triplett merely had three days training of some unspecified nature at a police academy along with two weeks field training of an unspecified nature. It is unknown who administered his training. Sgt. Triplett himself demonstrated that he knew little of the scientific operation of radar. Nevertheless, he relied on the readings from the device as though it was infallible. He felt that the device never needed maintenance. He believed that the device could distinguish between different cars on the highway and that the radar beam would not reflect off objects. He felt that he could always tell when the device was giving a spurious reading. His operation of the device while parked next to a pumping station with rotating metal ventilation fans is a perfect example of his lack of awareness that electromagnetic interference from such a radiating

source could cause a spurious reading. It is impossible for this Court to determine from the radar results whether the Defendant was traveling at 43 miles per hour or whether the Speedgun Eight was measuring the rotation of the ventilation fan at the sewage pumping station next to Sgt. Triplett's automobile.

The evidence establishes that Sgt. Triplett did not operate the device properly because he was unaware of the conditions of the correct operation.

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121 Ohio St. 332; 168 N.E. 846
STEELE

v.

THE STATE OF OHIO
No. 21660

Supreme Court of Ohio
November 13, 1929

The Plaintiff in error, Thomas Steele, was indicted for manslaughter, committed in the City of Warren, Trumball County, Ohio, on the trial the state offered in evidence an ordinance duly adopted by the City of Warren, making it unlawful for four or more persons to be in the front seat of an automobile when driven upon the streets of the city.

The homicide resulted from a collision while Steele was driving one of the two colliding automobile in the City of Warren, and when he had in the front seat with him at the time three other persons. The ordinance was offered to establish the fact at the time of the homicide Steele was engaged in committing an unlawful act.
Introduction of the ordinance was objected to by Steele, the objection overruled, and exceptions saved. Steele was found guilty, and sentenced to a minimum term of 15 years in the penitentiary. This judgment was affirmed by the Court of appeals. Steele prosecutes error to this court.

The judgments of the lower courts must be reversed, on the authority of *Johnson v. State*, 66 Ohio St., 59, 63 N.E. 607, 61 L.R.A. 277, 90 Am.St.Rep. 564; *State v. Collingsworth*, 82 Ohio St. 154, 92 N.E. 22, 28 Am.St.Rep. 770, 137 Am.St.Rep. 775; and the first and second paragraphs of the syllabus in the case; *State v. O'Mara*, 105 Ohio St. 94, 136 N.E. 885. The statement of the law in paragraphs 3 and 4 of that case is disapproved and overruled. Judgment reversed.